

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, May 8, 2018)

501 KAR 16:310. Pre-execution medical actions.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 314.011, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes medical actions to be performed after receipt of the execution order and prior to the execution.

Section 1. Pre-execution Medical Actions after Receipt of Execution Order. (1) For the fourteen (14) days prior to an execution, or for the remaining days if an execution order is received less than fourteen (14) days prior to an execution:

(a) All medical documentation shall be made in special notes in the condemned person's medical record.

(b) The department shall arrange for nurse visits ~~for~~~~[and checks on]~~ the condemned person during each shift daily. The contacts and observations from these nurse visits~~[and checks]~~ shall be recorded in the special notes of the medical record referenced in paragraph (a) of this subsection. The nurse notes shall state the presence or absence of signs of physical or emotional distress observed.

(c) A licensed psychologist shall:

1. Personally observe and evaluate the condemned person five (5) days per week on Monday through Friday;~~[and]~~

2. Document his observations and evaluations in the condemned person's medical record immediately after personal contact with the condemned person:~~[and]~~~~[-]~~

3. Review the department medical records for the condemned person for:

a. A diagnosis of an intellectual disability as:

(i) Indicated by the criteria in the Diagnostic and Statistical Manual (DSM); or

(ii) Defined by the American Association on Intellectual and Developmental Disabilities (AAIDD); or

b. An IQ test score of seventy-five (75) or lower; and

4. If any record is located that meets the criteria in subparagraph 3 of this paragraph, the psychologist shall notify the warden~~[any validated psychological testing report that contains a diagnosis of an intellectual disability as indicated by the criteria in the current Diagnostic and Statistical Manual (DSM). If any testing results are located that meets this criteria, the psychologist shall notify the warden]~~.

(d) The designated medical professional shall review and sign the nursing documentation referenced in paragraph (b) of this subsection daily.

(e) A psychiatrist shall review the nursing documentation referenced in paragraph (b) of this subsection and any other mental health or medical documentation weekly.

(2) For the seven (7) days prior to an execution, or for the remaining days if an execution order is received less than seven (7) days prior to an execution:

(a) A doctor or advanced practice registered nurse shall:

1. Complete a physical examination; and
 2. Place the documentation of the physical in the condemned person's medical record upon completion of the documentation.
- (b) A psychiatric interview and evaluation to assess for signs of insanity shall be:
1. Completed by a licensed psychiatrist or a licensed advanced practice registered nurse (APRN) certified in a psychiatric mental health population focus;
 2. Placed in the condemned person's medical record; and
 3. Sent to the warden.
- (3) The designated medical professional shall:
- (a) Personally observe and evaluate the condemned person's medical condition at least twice on nonconsecutive days; and
 - (b) Document his observations and evaluations in the special notes of the condemned person's medical record immediately after personal contact with the condemned person.
- (4) All Kentucky State Penitentiary medical and mental health staff shall be instructed to immediately notify the warden and the designated professionals of any change in the condemned person's medical or psychiatric condition.

Section 2. Pregnancy Testing for Female Condemned Persons. (1) If the condemned person is female, a pregnancy test shall be administered.

(2) ~~A~~[If the execution order is received at least fourteen (14) days prior to the scheduled date of execution, a] pregnancy test shall be administered at least[:

~~(a) fourteen (14) days prior to the scheduled date of execution; and~~

~~(b)] seven (7) days prior to the scheduled date of execution, unless the execution order is received less than seven (7) days prior to the scheduled date of execution.~~

(3) If the execution order is received less than seven (7)~~[fourteen (14)]~~ days prior to the scheduled date of execution, a pregnancy test shall be administered as soon as practicable.~~[A physician shall determine if a second pregnancy test is feasible given the date the execution order is received and when the initial pregnancy test is taken.]~~

(4) If a pregnancy test is positive, then **the department shall:**

(a)~~[The department shall]~~ Give notice to the Attorney General or his designee, the condemned person's counsel, the condemned person, and the Governor's Office or court issuing the mandate that the condemned person is pregnant; and

(b) Suspend the execution pursuant to KRS 431.240(2).

Section 3. Insanity Issues. (1) If the warden receives information from medical or mental health staff that the condemned person exhibits signs or symptoms indicating that he may be insane as defined in KRS 431.213(2), the warden shall inform the designated medical professional.

(2) If the designated medical professional receives information from the warden or department medical or mental health staff, he shall determine~~[if the information is]~~:

(a) The source of the information; and~~[opinion of the department psychiatrist; or]~~

(b) If the information is not from the department psychiatrist, whether it is sufficient to indicate that an additional~~[department]~~ psychiatric evaluation needs to be performed on the condemned person.

(3) The designated medical professional shall order a~~[department]~~ psychiatric evaluation if he determines one is needed.

(4) If a department psychiatric evaluation determines that the condemned person may be insane as defined in KRS 431.213(2), the department shall:

(a) Give notice to the Attorney General or his designee, the condemned person's counsel,

the condemned person, and the Governor's Office or court issuing the mandate that the condemned person appears to be insane; and

(b) Suspend the execution pursuant to KRS 431.240(2) to allow procedures consistent with KRS 431.2135.

Section 4. Serious Intellectual Disability. ~~[(1)]~~ If the warden is notified by the psychologist described in Section 1(1)(c) **of this administrative regulation**~~[(3)]~~ concerning ~~[a testing report that contains]~~ a diagnosis of an intellectual disability **or an IQ test score of seventy-five (75) or less** for the condemned person, the:

~~(1) [(a)]~~ Warden shall notify the commissioner; and

~~(2) [(b)]~~ Commissioner shall notify in writing the Attorney General or his designee, the condemned person's counsel, and the condemned person of the **record**~~[information]~~ located. The notice shall state that a court order is required for the execution to be suspended.

Section 5. Execution Substances. The warden shall:

(1) Notify medical staff and the ambulance service of the substances that may be used for the execution so that planning can be done in case of suspension of the execution after the drugs have been administered; and

(2) Direct medical staff to review the medications of the condemned person for a potential adverse reaction to the substances.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: April 10, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.